

## APPEALS PROCESS

### OVERVIEW

On March 21, 1995 the FDIC Board of Directors adopted Guidelines for Appeals of Material Supervisory Determinations, which describes the process under which financial institutions may appeal material supervisory determinations (MSDs) made by examiners and/or regional supervisory officials.

### Objective(s)

The objective of this section is to:

Provide guidelines regarding the FDIC's and specifically, the Division of Compliance and Consumer Affairs (DCA) obligations under the FDIC's appeals process

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### DEFINITION(S)

#### DCA Appeals Panel

The DCA Appeals Panel (AP) is comprised of the DCA Section Chief (or designee) from the Compliance and Enforcement Section, the Fair Lending Section, the Consumer Affairs Section, and the Analysis and Policy Review Section.

#### Material Supervisory Determination (MSD)

Include, but are not limited to:

CRA ratings

Consumer compliance ratings

<b>DEFINITION(S)</b> <b>(cont'd)</b>	Determinations relating to violations of a statute or regulation that may impact the capital, earnings, or operating flexibility of an institution, or otherwise affect the nature and level of supervisory oversight accorded an institution
<b>Material Supervisory Determination (MSD)</b> <b>(cont'd)</b>	Any other supervisory determination (unless otherwise not eligible for appeal) that may impact the capital, earnings, operating flexibility, or capital category for prompt corrective action purposes of an institution, or otherwise affect the nature and level of supervisory oversight accorded an institution

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<b>Supervision Appeals Review Committee (SARC)</b>	The FDIC's Board of Directors established a Supervision Appeals Review Committee (SARC) to review those appeals that cannot be promptly resolved in favor of the financial institution. The SARC is composed of the Vice Chairman of the Board of Directors, Director of the Division of Supervision, Director of the Division of Compliance and Consumer Affairs, General Counsel and Ombudsman, or their designees.
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<b>FDIC GENERAL POLICY</b>	Financial institutions should make a good faith effort to resolve the dispute concerning the MSD with the on-site examiner and/or the Regional Office. The on-site examiner and the Regional Office are expected to promptly respond to any concerns raised by an institution regarding a MSD.
<b>Initiating an Appeal</b>	<p>If the institution was unable to resolve the dispute with the DCA examiner or the Regional Office, and would like to initiate an appeal, the financial institution must submit a written request for review to the Director of the Division of Compliance and Consumer Affairs.</p> <p><b>Informal</b> resolution of disputes is encouraged; however, attempts at informal resolution is not a condition to the filing of an appeal with the Washington Office.</p>

A request for review includes:

- A detailed description of the issues in dispute
- The surrounding circumstances
- The institution's position regarding the dispute and any other arguments to support that position (including citation of any relevant statute, regulation, policy statement or other authority)
- The impact of the resolution on the institution

**FDIC  
GENERAL  
POLICY  
(cont'd)**

- The reasons such impact would be material
- The good faith effort to resolve the dispute with the on-site examiner and the Regional Office and the results of that effort

**Initiating an  
Appeal (cont'd)**

A statement that the institution's board of directors/trustees has considered the merits of the appeal and authorized the appeal

All appeals to the Washington Office must be initiated within 60 days following the institution's receipt of an examination report or other written communication containing a MSD.

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**Resolution of  
Appeals**

*NOTE: DCA has developed internal procedures for appeals.*

Division Directors may approve any recommendation that finds in favor of the institution. However, if the appeal cannot be promptly resolved in favor of the financial institution, the Director will present the appeal, including any other relevant information, to the SARC.

The appeal will be reviewed:

For consistency with the policies, practices, and mission of the FDIC, including those of the Division of Supervision (DOS) or DCA, as appropriate, and

For overall reasonableness and support of the respective positions advanced

The financial institution must be notified of the FDIC's decision within sixty (60) days of receipt of the institution's request for review. The notice of decision must contain at a minimum:

An explanation of the factual basis as well as the reason(s) for the decision, and

A statement that the decision constitutes the final supervisory decision of the FDIC

*NOTE: The financial institution may request an appearance before the SARC to present evidence or otherwise support its position. The SARC has the discretion to determine whether to allow such appearance.*

**FDIC  
GENERAL  
POLICY  
(cont'd)****Resolution of  
Appeals (cont'd)**

If SARC determines that sufficient information was not provided to make a decision concerning the disputed MSD, the 60-day notification period will be extended upon agreement of the institution to allow the institution time to provide the information requested by SARC. If the institution fails to provide the requested information, the SARC may, but is not required to consider and decide the appeal.

If the FDIC fails to notify the institution in a timely manner, the institution may request that the Ombudsman investigate or otherwise intervene in the matter.

The decision of the SARC is the final supervisory decision of the FDIC and will not be eligible for further appeal pursuant to the established procedures set forth in the Financial Institution Letter, Guidelines for Appealing Supervisory Determinations, FIL-28-95 dated April 4, 1995.

SARC may reconsider the decision concerning the disputed MSD.

The merits of any MSD for which an appeal has been initiated or a final decision made is not eligible for consideration by the Ombudsman.

If the appeal was granted in whole or part, the Regional Director or Regional Manager shall make whatever adjustments may be necessary in the supervisory treatment accorded the financial institution based on the determinations and decision of the appropriate Division Director or the SARC.

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**Coordination  
with State  
Regulatory  
Authorities**

If the MSD under appeal is the joint product of the FDIC and a State regulatory authority, the Division Director will promptly notify the appropriate State authority of the appeal, provide copies of relevant documents, and solicit that authority's views regarding the merits of the appeal before a final decision is made.

The SARC will notify the institution and the State authority of its decision. Any differences remaining between the institution and the State authority will be left to those parties to resolve.

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**FDIC  
GENERAL  
POLICY  
(cont'd)**

Any retaliation, abuse, or retribution by FDIC personnel, including an examiner, against an institution that appeals a MSD constitutes unprofessional conduct and will subject the examiner or other personnel to appropriate disciplinary or remedial action by the Division Director.

**Prohibition on  
Examiner  
Retaliation****DCA  
GENERAL  
POLICY**

The following policy and procedures are being implemented by DCA in accordance with the FDIC appeals process made effective March 21, 1995. These procedures will be enacted upon receipt of an appeal from a financial institution during the first thirty (30) days of the FDIC appeals process.

**Examiner  
Responsibilities**

Examiners and Review Examiners (REs) are reminded to fully support examination findings and conclusions in the examination report and the workpapers.

Examiners must fully inform the financial institution's management of the examination conclusions prior to exiting the financial institution. **This includes disclosing the examiner's *recommended* composite examination rating, both for compliance and CRA examinations, and any enforcement action under consideration.**

*NOTE: The examiner should make it clear to management that the rating is a recommendation and, therefore, subject to change during the review process in the Regional Office.*

REs should question any gaps, inconsistencies, or any unsupported or unexplained conclusions contained in the compliance Report of Examination or any other document informing the institution of a FDIC MSD. The assigned RE and the Examiner-in-Charge must strengthen any weak areas with supporting data before the compliance Report of Examination or document is submitted to the institution.

Communication between the FDIC and the financial institution should occur at all stages of the examination process. This is especially necessary in those circumstances, during the Regional Office review process, in which the examiner's recommended rating is being downgraded or the examiner's conclusions are being changed to adversely affect the financial institution.

**DCA  
GENERAL  
POLICY  
(cont'd)**

Upon receipt of an appeal from a financial institution by the DCA Director, the following procedures will be implemented during the first thirty (30) days of the FDIC appeals process. The procedures are outlined by section or office responsibility within DCA. At any point in DCA's process, the Director may delegate responsibility and signature authority.

**Procedures**

<b>DCA Director's Office Procedures</b>	
1.	May perform an initial cursory review and attach any necessary comments to the appeal package upon receipt of the appeal.
2.	Delegate review of the appeal to the Section Chief of the Compliance and Enforcement Section (CES) within one day of receipt of the appeal.
3.	<p>Either concur or deny the recommendation of the DCA Appeals Panel (AP) within approximately 21 days after receipt of the appeal.</p> <p>The decision of the Director determines which of the following action takes place:</p> <p>If the recommendation of the AP is to <b>find in favor of the institution and the Director concurs</b>, the institution will be notified by the Director's Office and the case will be closed. As described under the Compliance and Enforcement Section Procedures, the assigned Washington Office RE will be responsible for drafting the notification for the Director's signature</p> <p>If the recommendation of the AP is to <b>deny the appeal and the Director concurs</b>, the AP and the RE will be responsible for preparing the case for presentation by the Director to the SARC</p> <p>If the recommendation of the AP is to <b>find in favor of the institution, but the Director does not concur</b>, the AP and RE will be responsible for either:</p> <ul style="list-style-type: none"> <li>-- Resolving any issues raised by the Director for subsequent approval, or</li> <li>-- Preparing the case for presentation to SARC</li> </ul>

**DCA  
GENERAL  
POLICY  
(cont'd)**

**Procedures  
(cont'd)**

If the recommendation of the AP is to **deny the appeal, but the Director does not concur**, the AP and RE will be responsible for resolving any issues raised by the Director. Otherwise, the decision of the Director will be final, the institution will be notified by the Director's Office, and the case will be considered closed. As described under Compliance and Enforcement Section Procedures, the assigned RE will be responsible for drafting the notification for the Director's signature

**Regional Office Procedures**

1. Copy and forward the appeal package to the appropriate Regional Office within one day of receipt in the Washington Office.
2. Promptly submit specific documents requested to the Washington Office for their review. This request may be dependent on the status of the institution (problem versus non-problem).
 

The documents requested for **non-problem institutions** will be:

  - Related examination report(s)
  - CRA Performance Evaluation
  - Transmittal letter,
  - Any proposed or executed enforcement action
  - Any workpapers determined by the Regional Office to be pertinent to the appeal

**Problem institutions**

Workpapers determined by the Regional Office to be pertinent to the appeal:

  - Examination report(s)
  - CRA Performance Evaluation
  - Transmittal letter
  - Enforcement action documents related to a problem institution that are routinely submitted to the Washington Office for review
3. Regional Office staff will review the case and prepare a memorandum for the Regional Manager's signature.

**DCA  
GENERAL  
POLICY  
(cont'd)**

**Procedures  
(cont'd)**

The memorandum:

Must be submitted to the DCA Director's Office to the attention of the assigned RE within 10 days

Should provide a detailed factual response to each of the institution's issues in dispute

*NOTE: The Regional Office must determine if the facts or circumstances of the appeal existed prior to or at the time the MSD was made. Guidelines require the FDIC to consider any facts or circumstances that existed prior to or at the time the determination was made, but that may have been discovered or come to the attention of the FDIC or the institution after such determination.*

*The Federal Register document distributed with FIL-28-95 cautions institutions not to introduce or present information or arguments for the first time on appeal which could have been introduced or presented to the on-site examiner and/or appropriate Regional Office. If it is determined that the information did exist prior to or at the time the determination was made, the Regional Office must attempt to reconcile the views of the institution with the views of the on-site examiner and/or Regional Office.*

*The Regional Office will work with the Washington Office RE during the ten-day time frame.*

*For those regions conducting compliance or CRA examinations concurrently with state authorities, the Regional Office will obtain the views of the state authority for transmission with its own memorandum to the Washington Office.*

**Compliance and Enforcement Section (CES) Procedures**

1. Within one day of receipt the Director will delegate review of the appeal to the Section Chief of the Compliance and Enforcement Section in the Washington Office. The case will then be subsequently assigned by the Section Chief to a Washington Office RE.
2. Upon receipt, the RE is responsible for ensuring that the appeal package is:
 

Copied and forwarded to the appropriate Regional Office, via overnight delivery



**DCA  
GENERAL  
POLICY  
(cont'd)**

**Procedures  
(cont'd)**

*NOTE: The assumption is made that the appeal has been received within 60 days of the institution's receipt of a report of examination containing a MSD or other written communication of a MSD. If the 60 days has significantly expired, the case will be returned to the institution. The Director will make the final determination regarding cases submitted after the 60 day time frame.*

Copied for distribution to each member of the AP

3. Depending on the status of the institution (problem versus non-problem), the RE will request the Regional Office to submit certain documents necessary for the Washington Office's review.

The documents requested for **non-problem institutions** will be:

- Related examination report(s)
- CRA Performance Evaluation
- Transmittal letter,
- Any proposed or executed enforcement action
- Any workpapers determined by the Regional Office to be pertinent to the appeal

**Problem institutions**

Workpapers determined by the Regional Office to be pertinent to the appeal:

- Examination report(s)
- CRA Performance Evaluation
- Transmittal letter
- Enforcement action documents related to a problem institution that are routinely submitted to the Washington Office for review

4. Upon receipt, the RE will draft an acknowledgment letter to the institution, for the Director's signature. The letter should:

Briefly describe the nature of the appeal

Direct the institution, if it is appealing the CRA rating or any content of the CRA Performance Evaluation, to either:

- Postpone placement of its public Performance Evaluation in the public file until the appeal case has been resolved, it has not already placed the document in its public file, or

**DCA  
GENERAL  
POLICY  
(cont'd)**

**Procedures  
(cont'd)**

- Attach to the document a notice that indicates the CRA composite rating or any content of the Performance Evaluation has been appealed, if the institution has already placed the CRA Performance Evaluation in its public file

State that the required time frame for placing the public CRA Performance Evaluation in the public file has been suspended until the appeal case has been resolved, if the institution is appealing its CRA rating

5. Provide a copy of the acknowledgment letter to each SARC member and to the Office of the Executive Secretary.

6. Provide a copy of the acknowledgment letter to the FDIC Office of Corporate Communications (OCC) if the institution is appealing its CRA rating.

*NOTE: The letter notifies the OCC that the institution's CRA Performance Evaluation should not be provided to any requesting party until the case is resolved.*

7. The RE will perform an independent review of the case, including:
- Early in the review, determine if the Legal Division should be contacted for guidance throughout DCA's processing of the case
- Responsible for making the contact with the Legal Division
- Coordinate the review with the Fair Lending Section in those cases involving CRA ratings and fair lending issues

8. The RE will telephonically contact the institution in each case, shortly after the acknowledgment letter is mailed to:
- Indicate the appeal has been received and is in process
- Discuss with senior management of the institution the nature of the appeal process and the issues in dispute to ensure that the institution's position is clear and understood
- Request additional information from the institution if determined by the RE and the Regional Office

**DCA  
GENERAL  
POLICY  
(cont'd)**

**Procedures  
(cont'd)**

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| 9.                                                                                                     | The RE will work with the Regional Office, and if necessary, the Fair Lending Section and Legal Division, during its ten day time frame to address the issues in dispute.                                                                                                                                                                                                                                       |
| 10.                                                                                                    | Approximately 11 days after the initial receipt by the Director, the RE will present the full case (original appeal package and Regional Office response) to the AP for discussion.                                                                                                                                                                                                                             |
| 11.                                                                                                    | The RE will assist in preparing the case for presentation to the Director when the AP concludes its review of the case and a recommendation has been determined.                                                                                                                                                                                                                                                |
| 12.                                                                                                    | After the decision of the DCA Director is finalized, the RE will either:<br><br>Draft the notification letter granting the appeal to the institution for the Director's signature, or<br><br>Prepare the case, with the AP, to be presented to the SARC once the Director determines denial of the appeal is appropriate                                                                                        |
| 13.                                                                                                    | The RE will obtain the signature of each AP member on the recommendation memorandums to the Director and the SARC.                                                                                                                                                                                                                                                                                              |
| 14.                                                                                                    | The RE will provide each SARC member a copy of the letter to the institution if the director grants the appeal. The RE will notify the Analysis and Policy Review Section to amend the original composite Compliance and Component ratings, and, if applicable, the component ratings, on the Compliance Statistical System if the Director grants an appeal that results in a changes in the original ratings. |
| 15.                                                                                                    | The RE is responsible for rewriting the public Performance Evaluation and drafting a transmittal letter for the Director's signature if the original CRA rating is changed.                                                                                                                                                                                                                                     |
| 16.                                                                                                    | If the Director decides to deny the appeal, the RE must promptly schedule a SARC meeting through the Office of the Executive Secretary (OES). Copies of the case must be provided to SARC members and their staff approximately one week before the scheduled meeting.                                                                                                                                          |
| <i>NOTE: A current distribution list of SARC members and their staff can be obtained from the OES.</i> |                                                                                                                                                                                                                                                                                                                                                                                                                 |

**DCA  
GENERAL  
POLICY  
(cont'd)**

**Procedures  
(cont'd)**

Contents of the case include:

Memorandum to SARC stating DCA's recommendation and a discussion of the supporting facts

Compliance Report of Examination and the CRA Performance Evaluation, if necessary

Regional Office response memorandum and other supporting documentation, as necessary

Copy of the institution's appeal documents

DRAFT letter to institution

17. The RE must obtain concurrence from each voting SARC member regarding the contents of the draft letter to the institution. The letter will be prepared for the signature of the FDIC's Executive Secretary.

**Fair Lending Section Procedures**

1. The Fair Lending Section Chief will assign a staff member to participate in the review function prior to the case presentation to the AP if the appeals case involves a CRA rating or a fair lending issue.
2. The RE and assigned Fair Lending Section staff member together will coordinate their review with the Regional Office.

**DCA Appeals Panel (AP) Procedures**

1. AP members will receive copies of the appeals package for preliminary review, preparation, and scheduling purposes.
2. The RE will present the full case (original appeal package and Regional Office response) to the AP for discussion purposes approximately **11 days** after the initial receipt by the Director.
3. The Panel will have **ten days** to review the case and make a recommendation to the DCA Director. As stated under Compliance and Enforcement Section above, the RE will assist the AP in preparing the case for presentation to the Director.

**DCA  
GENERAL  
POLICY  
(cont'd)**

4. Each AP member will sign the appropriate recommendation memorandums to the Director and the SARC.

**Procedures  
(cont'd)****OTHER  
MATTERS**

Appeals have been made to the Washington Office requesting relief from the reimbursement requirements of the Truth in Lending Act.

To date, appeals of this nature have been processed by letter to the institution describing the separate process under Part 303 of the FDIC Rules and Regulations. The letter states that, because of the separate process, the bank's appeal does not qualify under the FDIC's appeal guidelines. The FDIC's Guidelines for Appeals of Material Supervisory Determinations, FIL-28-95, dated April 4, 1995, specifically states that determinations relating to violations may be appealed, but determinations for which other appeals procedures exist are not eligible under the newly adopted guidelines.

If the institution has not done so already, it is encouraged to work with the Regional Office in accordance with Part 303. If the institution has already made its request to the Regional Office or sufficient information is provided in the appeal, the Washington Office may proceed and process the case under Part 303 in cooperation with the Regional Office. This eliminates the need for the institution to process more paperwork.

**WORKPAPER  
STANDARDS**

Workpapers should thoroughly support the examination findings and conclusions as they may be subsequently reviewed in the event of an appeal of a material supervisory determination, including examination ratings for compliance and CRA.

**FDIC LAW,  
REGULATIONS  
, & RELATED  
ACTS****Applicable Rules**

Riegle Community Development and Regulation Improvement Act of 1994,  
Section 309, Volume 3, Page 8890.13

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**Advisory  
Opinions**

None

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**Statements of  
Policy**

None

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**DCA  
MEMORANDA**

Procedures for Processing Appeals of Material Supervisory Determinations,  
Transmittal No. DCA-95-016, dated 5/15/95

Revised Procedures: Appeals of Material Supervisory Determinations,  
Transmittal No. DCA-96-026, dated 3/18/96

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**FINANCIAL  
INSTITUTION  
LETTERS (FIL)**

Guidelines for Appealing Supervisory Determinations, Letter #28-95, dated  
4/4/95

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